

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ANGELA KASHFIAN,

Plaintiff and Appellant,

v.

KASHFIAN BROTHERS CO., et al.,

Defendants and Respondents.

B285559

(Los Angeles County
Super. Ct. No. BC604240)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Michael Johnson, Judge. Affirmed.

Angela Kashfian, in pro. per., for Plaintiff and Appellant.

Bremer Whyte Brown & O'Meara, Vik Nagpal and
Timothy G. McNulty for Defendants and Respondents.

Plaintiff and appellant Angela Kashfian appeals from a judgment entered against her and in favor of defendants and respondents Keyhan Kashfian, Nader Kashfian (Nader),¹ Parviz Kashfian (collectively the Kashfian brothers), Kashfian Brothers, Co. (the company), and Abraham Barati (Barati). Although her opening brief is confusing, she seems to be arguing that the trial court wrongfully denied her a jury trial when it granted defendants' motion for judgment pursuant to Code of Civil Procedure section 631.8 (section 631.8).

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff initiated this action against defendants (her three brothers, their corporation, and their accountant) on December 15, 2015. Plaintiff's first amended complaint, the operative pleading, contains two causes of action, breach of implied contract and conspiracy, arising out of the following allegations: "On or about June 2004, and for valuable consideration, plaintiff and defendants and each of them entered into an oral agreement consisting of the following terms and conditions: defendants and each of them would acquire a majority interest in [plaintiff's] real property . . . and manage and use said Property to their best interest. In return, defendants and each of them promised to allow plaintiff to live on the property during plaintiff's lifetime, and to pay during plaintiff's lifetime, all of plaintiff's expenses as they became due and owing including, but not limited to plaintiff's mortgage, mortgage

¹ Because plaintiff and three of the defendants share the same last name, we refer to this defendant by his first name. No disrespect is intended.

insurance, property taxes and property maintenance; automobile payments, auto insurance, auto registration and maintenance; health insurance; household utility bills; and, provide her with gainful employment or alternatively, provide her with funds sufficient to start her own business so as to allow her to derive income sufficient for her food, clothes and shoes, household supplies, spending money and other necessities of life.” In late 2014, defendants allegedly “breached their oral agreement to pay for all of plaintiff’s expenses and to provide her with a means of employment or business opportunity during her lifetime, by then failing to pay for any of plaintiff’s expenses and further, terminating her employment with defendants’ company and not providing her with any means at all to support herself.”

On February 25, 2016, defendants filed a case management statement, requesting a jury trial. That same day, defendants also filed a civil deposit form and jury fees of \$150.

On July 27, 2016, plaintiff filed a case management statement; she did not request a jury trial and she never filed a civil deposit form or jury fees.

On July 13, 2017, defendants filed their requested jury instructions. Plaintiff never filed any jury instructions.

A jury trial commenced August 22, 2017. In her opening statement, plaintiff told the jury that she was suing her brothers “for the breach of oral and implied contract. The oral and implied contract between me and my brothers was that for the rest of my life, they would pay for all my living expenses; including all my bills, my car and my home and provide me with sufficient money to spend for living and to give me employment in one of their many companies they own.” She continued: “[M]y brothers later, without any notice, breached their agreement by failing and

refusing [to] pay[] for all my living expenses as they promised for the rest of my life. And to provide me with the employment that I had with them or to give me . . . sufficient money to spend for living. I have the evidence to prove all of these elements.”

Defendants then offered their opening statement, wherein the Kashfian brothers admitted that they had been supporting plaintiff—not pursuant to any contract but because they did not want her living on the street.

Following defendants’ opening statement, plaintiff began her testimony. Plaintiff testified that she and her brothers had entered into an “oral implied contract” whereby they would support her and her children for the rest of her life. Specifically, one day in 2003 after plaintiff’s husband had left the family and plaintiff’s house was in foreclosure, Nader told her that she did not need to worry; he would support her for the rest of his life. Plaintiff’s other two brothers were not present at the time, and plaintiff did not offer evidence of any promises they made to her regarding lifetime support.

Regarding Barati, plaintiff admitted that he never promised to pay her any money.

On the morning of the second day of trial, defendants informed the trial court that they were “waiving the jury.” The trial court then inquired: “The jury was requested by defendants and defendants are now waiving jury and not paying further jury fees?” Defendants responded, “Yes.”

Plaintiff objected, stating “[o]nce we commit to a commitment, we have to continue to the commitment.” The trial court responded: “The only party that requested a jury was defendants. The only party that paid fees were defendants. Defendants have withdrawn their request for jury and have not

paid fees for today. Just by virtue of not paying fees, the jury would be waived. On both grounds, the jury is waived.”

Notably, plaintiff never offered to pay the jury fees.

After the jury was excused, plaintiff continued with her presentation of her case. She called Nader to testify. He stated that he never promised to support her for the rest of her life. In response to plaintiff’s questions, Nader testified: “We admit that we supported you to keep your children in the house and not in the street after you ran off your husband.” But, he and his brothers never committed to support plaintiff for life.

After plaintiff rested, defendants brought a motion for judgment pursuant to section 631.8 “on the grounds that the plaintiff failed to prove a prima facie case on oral contracts or implied contracts with consideration sufficiently definite to be enforced.” The trial court granted the motion, reasoning that “as to the conspiracy claim, there can be no conspiracy to breach a contract.” With respect to Barati, the trial court found that there was “no evidence to support any claim against [him] He was just someone who acted on behalf of the other defendants.” As for plaintiff’s claims against the Kashfian brothers and the company, “there is a breach of contract claim that is asserted, which is based upon a promise to support the plaintiff for her lifetime. I find that there is no evidence to support a contract either express or implied. No basis for any of the terms, the terms are not clear. There’s no indication of any kind of an agreement to support the plaintiff for her lifetime or for an indefinite period.

“Obviously, I weighed the evidence and I just don’t find the plaintiff’s description of her conversation with Nader to be credible or persuasive. The most that she had was a unilateral

expectation that they would continue to support her. But it's just that, it's just a unilateral expectation. There was no mutual agreement of any kind to support a contract.

"The evidence here, the defendants were volunteers. They stepped up to help the plaintiff at a time of need and continued to do so for many years. But that does not establish any basis for a contract or an obligation to continue beyond the period they volunteered for."

Judgment was entered, and plaintiff's timely appeal ensued.

DISCUSSION

"A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Thus, in challenging a judgment, the appellant must raise claims of reversible error or other defect, and "present argument and authority on each point made." (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591; accord, *In re Marriage of Ananeh-Firempong* (1990) 219 Cal.App.3d 272, 278.) "[F]ailure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal." (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119.) An appellant's election to act as her own attorney on appeal does not entitle her to any leniency as to the rules of practice and procedure; otherwise, ignorance is unjustly

rewarded. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985.)

After reviewing plaintiff’s opening brief, it is virtually impossible to determine what occurred below. But, the gist of her claim seems to be that the trial court erred in granting defendants’ motion for judgment.

Section 631.8, subdivision (a), provides, in relevant part: “After a party has completed his presentation of evidence in a trial by the court, the other party, without waiving his right to offer evidence in support of his defense or in rebuttal in the event the motion is not granted, may move for judgment. The court as trier of the facts shall weigh the evidence and may render a judgment in favor of the moving party.”

“The standard of review of a judgment and its underlying findings entered pursuant to section 631.8 is the same as a judgment granted after a trial in which evidence was produced by both sides. In other words, the findings supporting such a judgment ‘are entitled to the same respect on appeal as are any other findings of a trial court, and are not erroneous if supported by substantial evidence.’ [Citations.]” (*San Diego Metropolitan Transit Development Bd. v. Handlery Hotel, Inc.* (1999) 73 Cal.App.4th 517, 528.) This court views the evidence in the light most favorable to the respondents, resolves all evidentiary conflicts in favor of the prevailing party and indulges all reasonable inferences possible to uphold the trial court’s findings. (*Ibid.*)

Plaintiff pled two causes of action against defendants: breach of implied contract and conspiracy. Like all contracts, an implied contract requires proof of consideration. (*Jara v. Suprema Meats, Inc.* (2004) 121 Cal.App.4th 1238, 1248–1249.)

“In view of the requirement of a bargained-for exchange, California courts have repeatedly refused to enforce gratuitous promises.” (*Id.* at p. 1249.)

Here, plaintiff contends that she had a contract with defendants to support her for the rest of her life. But she did not provide any evidence of any consideration that she gave to defendants in exchange for supporting her for the rest of her life. And, defendants presented evidence that they never agreed to support her for the rest of her life; the support the Kashfian brothers gave was voluntary generosity. Absent any evidence of consideration, it follows that defendants were entitled to judgment on plaintiff’s breach of contract claim.

As for plaintiff’s conspiracy cause of action, it is well-settled that civil conspiracy is not an independent and separate cause of action. It is a legal doctrine that imposes liability on coparticipants in a common plan to commit tortious conduct. (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510–511.) Given that (1) conspiracy is not a stand-alone cause of action, and (2) plaintiff does not allege any torts against defendants, the trial court rightly granted defendants’ motion for judgment as to this cause of action as well.

As set forth above, section 631.8 applies only in a nonjury trial. To the extent plaintiff is suggesting that the trial court erred in dismissing the jury and continuing with a bench trial, we see no basis for reversal. Plaintiff waived any request for a jury by failing to make a timely demand for a jury trial. (Code Civ. Proc., § 631, subd. (f); *Taliaferro v. Hoogs* (1965) 236 Cal.App.2d 521, 529.) She did not request a jury in her case management statement; she never paid any jury fees (or offered to pay those fees when defendants indicated that they were not going to pay

any additional fees); and she never provided the trial court with jury instructions.

In light of our conclusion that the trial court did not err in granting defendants' motion for judgment, it follows that plaintiff's unfounded assertions that her constitutional rights, women's rights, labor rights, identity rights, and right to be free from slavery fail as a matter of law.

DISPOSITION

The judgment is affirmed. Defendants are entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT